IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 312 of 2001

Jania Kakad Vasavda ... Appellant

V/s

The State, through
the Administrator,
U.T. of Dadra and Nagar
Haveli, Silvassa .. Respondent

Shri C.M.Kothari for the Appellant
Shri Girish FR. Agarwal i/b shri R.M.Agrawal for Union of India
Shri P.S.Hingorani,A.P.P. for the State

CORAM:S.B.MHASE AND
S.R.SATHE,JJ.
DATED:27th October 2005

ORAL JUDGMENT :- (Per S.R.SATHE,J.)

1. The Appellant original accused in Sessions Case No.20

of 1999 has preferred this appeal against the judgment and order passed by the Court of Sessions Judge, Dadra and Nagar Haveli, Silvassa whereby the accused was convicted for the offence punishable under Section 302 of IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.500/- in default to suffer rigours imprisonment for two weeks.

2. The brief facts giving rise to this appeal are as under :-

. The complainant Sonia Kakad Vasavla was residing at Bhujadpada along with his 4 brothers including his brother Jania Kakad Vasvad, the accused in the instant case. All of them were residing separately but in the same locality. the incident in question has taken place on 6-7-1999 at about 6-00 a.m. A day prior to the incident in the evening, the accused Jania had consumed liquor and had gone at the house of his brother Sonia Kakad. At that time deceased Tulsi, mother of the accused and complainant were also there. Accused picked up quarrel and abused the complainant. Deceased Tulsi told the accused not to quarrel and also warned him. Thereupon the accused gave a threat that he would finish somebody. As a result of this incident, the complainant, his mother and others felt that accused Jania would take some steps to materialise his threat. As a result of the said apprehension the complainant Sonia Kakad and Barakia

Kakad Vasavla had gone to the house of their neighbour. When Sonia was returning, he found that his mother Tulsi was proceeding towards the house of Jethia and when she was near from the door of house of Jethia accused Jania went running towards her and gave blows with sickle to Tulsi. As a result of the same Sonia raised shout. Hearing the said shout Prabhu and Vasant also reached there. The accused after assault threw the sickle at the said place and ran away. The complainant Sonia and his brother took Tulsi in the house of Jethia. However, Tulsi succumbed to the injuries sustained by her. Thereafter Police were informed about the incident. PSI Mahajan on receipt of the said information reached to the place of offence at about 8-00 a.m. He then made enquiries with the complainant and recorded his complaint and sent the same to the Police station for registering the crime. On the basis of the said complaint Police registered offence against the accused. Police then drew the panchanama of offence and Inquest panchanama. they also sent the dead body for postmortem and arrested the accused and attached the clothes of the accused which were on his person. The Police also recorded the statements of some other witnesses and sent the attached property viz. clothes of accused and sickle which was attached from the place of offence to C.A. After completion of the investigation Police submitted charge sheet against Jania in the Court of the Chief Judicial Magistrate, Silvassa.

3. Finding that the accused was charge sheeted for the offence punishable under Section 302 of IPC which was exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate, Silvassa committed the case to the Sessions Judge, Dadra and Nagar Haveli at Silvassa.

4. The learned Sessions Judge framed charge Exh.3 against the accused for the offence mentioned above. The charge was read over and explained to the accused. He pleaded not guilty and claimed to be tried. From the suggestions put to the PWs and from the statement of accused recorded under Section 313 of IPC, it appears that the defence of the accused is of total denial. It is his contention that as a result of the dispute between him and his brothers, he has been falsely implicated in the case.

5. In order to bring home the guilt of the accused the prosecution examined in all 7 witnesses consisting of,

i) P.W.1 complainant Sonia Kakad Vasavla, Exh.6,

ii) P.W.2 complainant’s brother Barakia Kakad Vasavla Exh.8, the alleged eye witness

iii) P.W.3 Dr.Ramlal Sheru Pottoli, who did post mortem, Exh.9

iv) P.W.4 Jatia Lakhma Vanjara, Exh.12

v) PW 5 Pancha witness Vajiya Jana Nam, Exh.18

vi) PW 6 Sakri Jethia Vanjara, alleged eye witness, Exh.21,

and the Investigating Officer PSI Krishna Barku Mahajan.

6. The prosecution also produced the panchanama of the place of offence Exh.19, panchanama of attachment of clothes of accused Exh.20, Post mortem notes Exh.12 and C.A. report Exh.24.

7. After considering the evidence adduced by the prosecution the learned trial Judge came to the conclusion that the prosecution has proved beyond reasonable doubt that the accused committed murder of Tulsi. He, therefore, passed the order of conviction and sentence as mentioned above.

8. Being aggrieved by the said order the accused has filed the present appeal. In this appeal before us, Mr.C.M.Kothari, learned Advocate for the accused has urged only two points. Firstly, he submitted that the learned trial Judge has not properly appreciated the evidence on record. According to him, the alleged

incident had taken place in the early morning at the first call by cock and as such there was darkness and it was not possible for the alleged eye witness to see the assailant. Secondly, he canvassed before us that there are contradictions in the evidence of the complainant Sonia and his brother Barakia as well other two witnesses viz. Jethia Exh.12 and his wife Sakri Jethia Exh.21. He also argued before us that evidence of the alleged eye witnesses is inconsistent with the medical evidence. He, therefore, submitted that prosecution has failed to prove the guilt of the accused and appeal be allowed and accused be acquitted. As against this the learned A.P.P. supported the judgment and order passed by the trial Court.

9. The relation between the accused and deceased and eye witnesses Sonia, Barakia is not in dispute. It is also an admitted fact that the complainant Sonia and his brothers were residing separately but in the same locality at Bhujapada at village Velugam. It is an admitted fact that on 6-7-1999 in the morning when PSI Mahajan went to the place of offence he noticed the dead body of Tulsi and it was found that she had sustained bleeding injuries. If we see post mortem report which is at Exh.10 and in particular the column no.17, it is clear that Tulsi had sustained 3 injuries as mentioned below:

i. incised wound in Lt.Elbow joint size 3" x 1" x 1/2"

incised and punctured wound in Lt.lower chest (mid clavicular line size 4" x2" incised wound in Rt lower chest (Mid clavicular line) size 2" x1"

The doctor has opined that cause of death is cardiac arrest due to severe haemorrhage from heart resulting from incised (Punctured) wound.

. Thus from this evidence it is very clear that death of Tulsi is homicidal. In fact, it is nowhere even suggested by the defence that death of Tulsi is not homicidal. All that is suggested is that the said death has not been caused by the accused and assailant was some different person.

10. The main and material question is whether the prosecution has proved that injuries sustained by Tulsi were at the hands of the accused Jania. In order to prove this, the prosecution is mainly relying on the testimony of 3 eye witnesses viz. Sonia Kakad Exh.6, Barakia Kakad Exh.8 and Sakri Jethia Exh.21. The complainant Sonia Kakad has specifically stated that on the day prior to the incident in question there was quarrel and at that time the accused had consumed liquor and he gave threat that he would kill someone. In fact, as a result of the said threat there was apprehension in the mind of Sonia and his brother Barakia and mother Tulsi had gone to their neighbour for sleeping. The

complainant has stated that accordingly all of them slept on that night in the house of Jethia and on the next day morning after first call of cock, Tulsi had gone outside the house to answer nature's call so also the complainant and Barakia had left the house for the same purpose. He has further stated that when he was returning towards the house, he found that his mother Tulsi was near the house of Jethia and at that time the accused went running towards her and gave two blows with sickle on the chest of Tulsi and one blow on the left elbow. He, therefore raised shout and immediately helped Tulsi. The accused, however, ran away from the said place by throwing the sickle on the spot. It was argued on behalf of the defence that the complainant has admitted in the cross examination that at the relevant time there was darkness. So, according to him the complainant was in fact not in a position to see and identify the assailant and it is only because some quarrel had taken place on previous night the complainant named the accused. Firstly, it must be noted that the alleged incident has taken place at about 6-00 a.m. So, at such time their may not be complete dark. Moreover, the complainant has specifically stated that he saw the assailant from a distance of 15 ft. The assailant, was none else but his real brother. So, it must be said that he was definitely in a position to identify him. It is needless to say that some times even if there is no sufficient light person may be in a position to identify the other person, if he is well

acquainted with him. Such person can be identified even from his stature or voice. So, merely because at that time there was dark, we cannot jump to the conclusion that the complainant was not in a position to identify the assailant.

11. The version of the complainant is also corroborated by his brother P.W. 2 Barakia. He has also stated that at the relevant time when he was proceeding towards his house he found that Jania went running towards Tulsi and gave blows of sickle to her. It is tried to be suggested on behalf of the defence that Barakia was in fact not present when actual blows were given to Tulsi and he had reached to the spot only after hearing the shout. It is true that complainant Sonia had specifically stated that he raised shout only after the time the accused gave blows to Tulsi. But merely because Barakia has said that he has gone thereafter hearing the shout we cannot jump to the conclusion that he was not near from the said place or that it was not possible for him to see the alleged incident from the spot where from he was proceeding towards his house. If we see the evidence of complainant Sonia and Barakia we find that there are absolutely no material omissions or contradictions in their evidence. Whatever minor discrepancies are pointed out, the same are not at all sufficient to discard the testimony of these witnesses. Merely because Barakia has said that in his statement before the Police he had not

stated that on that day he had got up in the morning when there was first call of cock, it cannot be said that there is any material omission and the evidence of the said witness is not trustworthy. Similarly, merely because complainant Sonia did not make any effort to hold the accused or he did not raise any shout prior to time the accused actually assaulted Tulsi, we cannot jump to the conclusion that conduct of Sonia is unnatural. It must be noted that when he saw the accused, he was only at a distance of 15 ft. and the alleged incident had taken place within a fraction of a second. So he might not have thought that accused would do immediate harm to Tulsi. So, merely because Sonia did not react in a particular manner, we cannot jump to the conclusion that his testimony is not acceptable.

12. It is pertinent to note that FIR is lodged by Sonia practically immediately after the incident wherein he has clearly named the present accused as an assailant. Prompt lodging of FIR also lends support to the prosecution version and suggest that there was no possibility of any concoction and to hatch a plan to involve the accused falsely.

13. PW 6 Sakri Jethia has stated that on that day the complainant and his mother had come to her house for sleeping as they had a quarrel with Jania on the previous night. She has also stated that at the relevant time

when she was inside the house and Tulsi was approaching towards their house, accused came running from back side of Tulsi and gave blows with sickle to Tulsi. The evidence of Sakri is also not at all shaken or shattered in cross examination. It must be noted that presence of witness Sakri so also the eye witness Sonia and Barakia is quite natural. So, there is no reason to raise any doubt about their testimony, particularly when the same is not at all shaken or shattered in the cross examination.

14. Another prosecution witness viz. Jatia Lakhma Vanjara Exh.12 (PW 4) has also stated that when he heard the shout of Sonia he went at the spot and at that time he found that Tulsi had sustained bleeding injuries. When he made enquiries with complainant sonia as to how she sustained injuries, immediately thereupon Sonia told him that accused Jania assaulted her. So, this immediate prompt disclosure of the name of the accused to Jatia also lends support to the prosecution version.

15. The learned Advocate for the accused tried to argue before us that according to Dr.Ramlal Sheru Pottoli Exh.9 (PW 3) has stated that above injuries are not possible if the blows are given from the back side of the person. It is true that complainant Sonia Kakad as well as witnesses Barakia Kakad and Sakri Jethia has stated that when Tulsi was proceedings towards house of Jethia, accused went

running from her behind and gave blows. However, that does not necessarily mean that accused actually gave the blows by standing on the back side of Tulsi. It is quite possible that when he went running towards Tulsi, Tulsi might have turned back or the accused may have given blows by standing by the side of Tulsi. When the entire incident has taken place within faction of a second, it is really very difficult to anyone to state about the exact position in which the victim was standing and position in which the accused was standing. What is material is that at the relevant time the accused reached near the victim and gave blows with sickle to her. For that incident, there is no discrepancy in the evidence of these eye witnesses. Moreover, doctor has stated that injuries mentioned in column no.17 are possible due to blows with sickle. So, under such circumstances we do not find that there is any infirmity which would create doubt about the prosecution version.

16. There is also another important piece of evidence which lends support to the prosecution case. It is an admitted fact that on that day within couple of hours from the incident the accused was arrested and at that the clothes of the accused which were on the person of the accused were attached by Police. The said clothes were thereafter sent to C.A. and C.A. has opined that blood of "B" group was found on the said clothes. It has also come on record that blood group of deceased was "B"

Much is made about the fact that in panchanama there is no mention that when the clothes of the accused were attached, they were sealed. It is true that to that extent there is infirmity in the panchanama. However, at the same time it must be noted that in C.A. report it has been mentioned that articles in sealed condition were received by C.A.. So, under such circumstances merely because there is no specific mention about sealing of the clothes, one cannot jump to the conclusion that the evidence in that behalf is concocted or is not trustworthy. Ultimately when we find that ocular evidence is trustworthy, conviction order can be passed even on the testimony of the said eye witness. From the panchanama of place of offence Exh.19, it appears that place of offence is just near from the door of the house of Jethia. So, this also establishes that alleged incident has taken place very near from the door of Jethia as stated by the complainant and other witnesses.

17. Much is made about the fact that prosecution has not brought any evidence on record to show the motive for the crime. However, it is well settled that when the direct evidence is trustworthy, the prosecution need not prove the motive. In the instant case the prosecution has in fact, established that on the day prior to the incident the accused had picked up quarrel with complainant and at that time he was in drunken condition and had abused the complainant, when his mother warned him. He had

threatened that he would finish someone. So, under such circumstances merely because the prosecution has not brought any other motive on record we cannot jump to the conclusion that the accused is entitled to get benefit of the same.

18. Thus having regard to the evidence of the eye witnesses coupled with circumstantial evidence namely finding the blood of the same group of the deceased on the clothes of the accused, we have no hesitation to hold that the learned trial Judge has rightly appreciated the evidence on record and has correctly held that the accused is guilty of offence punishable under Section 302 of IPC.

19. In this view of the matter, there is no sustenance in the appeal. The appeal is dismissed.

(S.R.SATHE,J.) (S.B.MHASE,J.)